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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/862,993	05/22/2001	David Dines	1017-002US02	7510

28863            7590            06/06/2003  
SHUMAKER & SIEFFERT, P. A.  
8425 SEASONS PARKWAY  
SUITE 105  
ST. PAUL, MN 55125

EXAMINER
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ZEENDER, FLORIAN M

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 06/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/862,993	DINES ET AL.
	Examiner F. Ryan Zeender	Art Unit 3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 02 January 2002.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-35 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-35 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 May 2001 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a)  The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4)  Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other: \_\_\_\_\_.

**DETAILED ACTION**

***Oath/Declaration***

An updated Declaration was received on 1/02/02.

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-35 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of copending Application No. 09/862992. Although the conflicting claims are not identical, they are not patentably distinct from each other because agricultural products are often commodities.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 9, line 2, it is not clear whether, "the contracts" refer to the original contracts or to the "smaller number of contracts".

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-35, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Daughtery, III, '286.

Daughtery III discloses various means and various scenarios for exchanging commodities as well as means for hedging with options and futures contracts (See, for example, columns 1-2).

Re claims 1-7 and 30-35: Daughtery III teaches using call options, bought at a premium, to guarantee a maximum price for a buyer. Daughtery lacks the specific teaching of calculating a price for a quantity of the commodity based on the average of the selected prices (observed prices and maximum prices). It would have been an obvious design choice at the time of the invention to modify Daughtery III to have the price of the commodity calculated based on the average of selected prices (observed prices and maximum prices), as averaging prices over an extended period of time is well known in the business industry, for example the well known concept of "dollar cost averaging".

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Re claims 8-16 and 24-35: Daughtery III lacks the specific teaching of aggregating contracts into a smaller number of contracts between the buyer and a derivatives provider. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Daughtery to include aggregating contracts into a smaller number of contracts between the buyer and a derivatives provider, as it is known for example in the agricultural products industry, that buyers (i.e., cereal manufacturers), may have contracts with a number of different farmers and that buyers purchase options, perhaps only a **single** options contract with a derivatives provider, in order to hedge against price fluctuations and thus be guaranteed at least a certain price (See, for example, Col. 7, lines 38-51).

Re claims 17-29 : Daughtery III teaches using put options, bought at a premium, to guarantee a minimum price for a seller (see, for example, Col. 7, lines 52-65). Daughtery lacks the specific teaching of calculating a price for a quantity of the commodity based on the average of the selected prices (observed prices and minimum prices). It would have been an obvious design choice at the time of the invention to modify Daughtery III to have the price of the commodity calculated based on the average of selected prices (observed prices and minimum prices), as averaging prices over an extended period of time is well known in the business industry, for example the well known concept of “dollar cost averaging”.

Re claims 11, 29, and 35: the producers/sellers (i.e., farmers) have absolutely no relationship with the derivatives provider with whom the buyer is dealing with.

Re claims 4, 12, 20, 26, and 32: it is well known in the art of business to have various “middlemen” who buy and sell goods/commodities as well as options contracts and the use of a

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middleman would have been obvious to one of ordinary skill in the art at the time of the invention.

Re claims 5-7, 14-16, 21-23: all of the claimed commodities are well known and it would have been obvious to one of ordinary skill in the art at the time of the invention to buy and sell contracts having any one of the commodities as the underlying asset.

Re claims 25-26, and 31-32 : when the buyer purchases his **single** option contract (see above) with a derivatives provider, he/she is effectively executing a financial swap.

Re claims 27 and 33: Fees are often exchanged between buyers and derivatives providers (i.e., brokers).

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Ryan Zeender whose telephone number is (703) 308-8351. The examiner can normally be reached on Monday-Friday, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bob Olszewski can be reached on (703) 308-5183. The receptionist's phone number for the Technology center is (703) 308-1113.

The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

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F. Zeender

Patent Examiner, A.U. 3627

June 2, 2003

RZ  
6/2/03